

SECTION 1. TITLE.

This Act shall be known as the [“Protect Florida Workers Act”].

SECTION 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (A) “Department” means the Florida Department of Business and Professional Regulation or its successor agency.
- (B) “Employee” means any individual who performs employment services in this state for an employer pursuant to an employment relationship between the person and employer.
- (C) “Employer” means any individual or type of organization transacting business in this state which holds or has applied for a license issued by an agency in this state and employs individuals who perform employment services in this state. The term does not include an entity that hires a bona fide independent contractor or the occupant or owner of a residence who hires casual domestic labor to perform work customarily performed by a homeowner entirely within a residence.
- (D) “E-Verify” means the employment verification program (formerly the Basic Pilot Program) under Pub. L. No. 104-208, Div. C, title IV, Subtitle A, 110 Stat. 3009-655 (Sept. 30, 1996), as amended or any successor program designated by the Federal Government for verification that an employee is not an unauthorized alien as by defined 8 U.S.C. § 1324a.
- (E) “Independent contractor” means individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done.

(F) “License” means any agency license, permit, certificate, approval, registration, charter, or similar form of authorization required by law and issued by an agency for the purpose of operating a business in Florida, including, but not limited to:

- (1) articles of incorporation;
- (2) a certificate of partnership, a partnership registration, or articles of organization;
- (3) a grant of authority issued pursuant to state or federal law; or
- (4) a transaction privilege tax license.

(G) “Unauthorized alien” means an unauthorized alien as defined by 8 U.S.C. § 1324a(h)(3).

SECTION 3. PROHIBITION ON THE KNOWING EMPLOYMENT OF UNAUTHORIZED ALIENS; E-VERIFY REQUIRED.

(A) Effective [July 1], an employer shall not knowingly or intentionally employ an unauthorized alien as provided in 8 U.S.C § 1324a.

(B) Effective [July 1], every employer shall, after making an offer of employment which has been accepted by an employee, verify the employment authorization of each new employee using E-Verify. Such verification shall occur within the period stipulated by federal law, regulations, and procedures after the hiring of the employee.

SECTION 4. PENALTY FOR FAILURE TO VERIFY THE EMPLOYMENT AUTHORIZATION OF NEW EMPLOYEE.

(A) For a first occurrence by an employer of failure to verify the employment authorization of a new employee using E-Verify, the Department must place the employer on probation for a period of one year, during which time the employer must submit quarterly reports to the Department demonstrating compliance.

(B) A subsequent violation within three years shall result in the suspension of the employer’s licenses for at least 10 days but not more than 30 days.

SECTION 5. PENALTY FOR KNOWINGLY OR INTENTIONALLY EMPLOYING UNAUTHORIZED ALIEN.

- (A) When the Department has determined that an employer knowingly or intentionally employs an unauthorized alien, the Department shall, upon 72 hours written notice, suspend all licenses held by the employer. The employer's licenses shall be reinstated when the employer demonstrates to the satisfaction of the Department that the unauthorized alien has been terminated, and the employer has paid a reinstatement fee equal to the cost of investigating and enforcing the matter, not to exceed \$1,000 for each investigation.
- (B) If the investigation determined that at least five unauthorized aliens were employed by the employer on the same date, the Department shall suspend the employer's licenses for at least an additional seven but not more than 30 days.
- (C) For a subsequent violation under this section, within three years of the first suspension, the employer's licenses shall be suspended for at least an additional 30 days but not more than 60 days.
- (D) For a third occurrence within six years of the first suspension, and for each subsequent violation of this section, the employer's licenses shall be suspended for an additional 180 days.
- (E) During the period of suspension, it shall be unlawful for the employer to engage in activities for which the suspended licenses were required by law.

SECTION 6. COMPLIANCE.

- (A) The Department shall issue reasonable regulations necessary for the implementation and enforcement of this Act no later than 180 days after the effective date.
- (B) In the event the Department does not issue regulations within the time limits set forth in this Act, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's duties.
- (C) The Department shall develop and administer a statewide random auditing program to inspect employers for compliance with the provisions of this Act.
- (D) The Department, its inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question either publicly or privately any employer, owner, manager, or agent

and the employees of the employer and inspect, investigate, reproduce, or photograph original business records relevant to determining compliance with the provisions of this Act.

- (E) Any person who has actual or constructive knowledge that an employer has within the previous 90 days violated this Act may file a complaint with the Department. Such person shall be protected under Florida's "Whistle-blower's Act" if the complaint implicates that person's employer.
- (F) A person who knowingly files a false and frivolous complaint under this Act commits a misdemeanor of the second degree.

SECTION 7. EMPLOYER COMPLIANCE ASSISTANCE BY STATE.

- (A) The Department shall establish a dedicated website to assist employers in complying with this Act. The Department shall maintain a public database of violations of this Act on the website.
- (B) The Department and any license distributing agency shall include notice of the requirements of this Act with all license applications.
- (C) The Department shall submit a report of each investigation for which a penalty has been imposed pursuant to Sections 4 or 5 of this Act to the U.S. Immigration and Customs Enforcement or its successor agency.

SECTION 8. PRESUMPTION OF COMPLIANCE.

- (A) An employer who in good faith verifies the employment authorization of a new employee using E-Verify shall be presumed to have not knowingly or intentionally employed an unauthorized alien for purposes of this Act.
- (B) An employer who terminates an employee in order to comply with the provisions of this Act shall not be subject to a civil action for wrongful termination of the employee.

SECTION 9. IMPLEMENTATION.

The provisions of this Act shall be implemented in a manner consistent with the federal laws, regulations, and procedures governing E-Verify and the employment of unauthorized aliens, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

SECTION 10. SEVERABILITY.

If any provision of this Act, or the applicability of any provision to any person or circumstance, shall be held to be invalid by a court of competent jurisdiction, the remainder of this Act shall not be affected and shall be given effect to the fullest extent practicable.

SECTION 11. Effective Date.

This Act shall go into effect [July 1, 2017].